IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

MFA.No. 1062 of 2000(B)

IC.6/2000 of E.I.COURT, KOZHIKODE
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APPELLANT - RESPONDENT:

THE REGIONAL DIRECTOR,
ESI CORPORATION, THRISSUR.

BY ADV. SMT.T.D.RAJALAKSHMY, SC, ESI CORPN.

RESPONDENTS - APPLICANT:

KERALA STATE HANDLOOM DEVELOPMENT
CORPORATION LIMITED, KANNUR - 670 001,
REPRESENTED BY ITS MANAGING DIRECTOR,
S.P. SREEDHARAN.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.P.BENNY THOMAS

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 1062 OF 2000

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Dated this the 27th day of September, 2007

J U D G M E N T

Regional Director, ESI Corporation, Thrissur is the appellant. The appellant demanded an amount of Rs.40,748/- as damages by way of penalty for delayed payment of contribution. The respondent filed E.I.C. No.6 of 2000 challenging that notice. The E.I. Court modified and reduced the quantum of penalty to Rs.7,000/- This appeal is filed challenging the order passed by the Employees' Insurance Court, Kozhikode, modifying the order passed by the appellant.

2. The applicant is a covered establishment. Government of India had issued a Notification enhancing the wage limit for coverage of employees under the ESI Act from Rs.3,000/- to Rs.6,500/- with effect from 1.1.1997. A number of Original Petitions were filed before this Court challenging that amendment and the Petitions were finally dismissed on 19.11.1997 upholding the validity of the Notification. It was averred that based on the judgment, the applicant had

remitted the contribution in respect of the employees concerned for the period from 2/97 to 12/97 on 14.9.1998. Appellant issued Exhibit P3 notice demanding damages. Applicant submitted Exhibit P4 representation. Appellant did not accept the same and imposed a penalty of Rs.40,748/-. Challenging that order, applicant filed E.I.C. No.6 of 2000. The EI Court, after considering the entire matter found that though the Original Petitions were disposed of on 19.11.1997, the contribution was paid on 14.9.1998, for which there was no valid excuse. The EI Court also found that that was a fact of suggestive willful default and the applicant was liable to pay some damages by way of penalty. The amount of Rs.40,748/- demanded by the appellant by way of penalty was reduced. The EI Court found that the applicant is liable to pay 5% of Rs.1,47,607.78, which will come to Rs.7,380.38, rounded off to Rs.7,000/-. Challenging the said order, this appeal is filed.

3. Learned counsel appearing for the appellant strenuously argued before me that after finding that there is deliberate negligence and defiance of law the EI Court ought not have awarded meagre amount as damages. It is argued

that the EI Court ought to have awarded amount as provided in Regulation 31C of Employees State Insurance (General) Regulations, 1950.

4. It is true that though the Original Petitions were disposed of on on 19.11.1997, the contribution was paid on 14.9.1998. Applicant has not adduced any oral evidence explaining delay. In the petition filed before the EI Court it was stated that the applicant took up the matter with the Government for exemption from paying penalty, discussions were held and that was the reason why delay has occurred. But none of the Officers of the applicant had gone to box and adduced evidence.

5. In E.S.I. Corporation v. Premanandan (2007 (2) KLT 666) a Division Bench of this Court has held that if imposition of damages is by way of penalty, then such damages can be imposed only in accordance with the principles applicable for imposing penalty for failure to carry out a statutory obligation. It was further found that even in cases where the establishment is not a sick industrial company, damages cannot be imposed unless the party acted

either deliberately or in defiance of law or was guilty of contumacious or dishonest conduct. It was further held that the provisions in Regulation 31C would only be guidelines in the matter of imposition of damages and percentage fixed is not absolute. It was also held that damages contemplated in Section 85B of the Act is not compensatory in nature, but is in the nature of penalty. The matter requires reconsideration in view of the principles laid down in Premanandan's case (supra). For that purpose the case has to go back.

6. In the result, the appeal is allowed. The order passed by the EI Court in E.I.C. No.6 of 2000 is set aside and the matter is remanded for fresh disposal. The EI Court is directed to take E.I.C. No.6 of 2000 back to file and dispose of the same afresh after giving both parties opportunity to adduce evidence, if so advised.

Parties are directed to appear before the EI Court on 15.11.2007.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 1062 of 2000

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J U D G M E N T

27TH SEPTEMBER, 2007